

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE TORRLUBE COMPANY, LLC,)
Plaintiff(s),) No. C07-1841 BZ
v.) ORDER SCHEDULING JURY TRIAL
TEC-LUBE INDUSTRIES, INC.,) AND PRETRIAL MATTERS
et al.,)
Defendant(s).)

Following the Case Management Conference, **IT IS HEREBY**
ORDERED that the Case Management Statement is adopted, except
as expressly modified by this Order. It is further **ORDERED**
that:

1. DATES

Trial Date: **Monday, 3/17/2008, 5 days**

Pretrial Conference: **Tuesday, 3/04/2008, 3:00 p.m.**

Last Day to Hear Dispositive Motions: **Wednesday, 1/23/2008**

Last Day for Expert Discovery: **Friday, 12/14/2007**

Last Day for Expert Disclosure: **Friday, 12/7/2007**

Close of Non-expert Discovery: **Friday, 11/30/2007**

Plaintiff will file its motion for leave to file an

1 amended complaint by **Friday, July 20, 2007**. Any opposition
2 will be filed by **July 30, 2007**, and any reply by **August 3,**
3 **2007**. If necessary, the Court will schedule a hearing on the
4 motion.

5 2. DISCLOSURE AND DISCOVERY

6 The parties are reminded that a failure to voluntarily
7 disclose information pursuant to Federal Rule of Civil
8 Procedure 26(a) or to supplement disclosures or discovery
9 responses pursuant to Rule 26(e) may result in exclusionary
10 sanctions. Thirty days prior to the close of non-expert
11 discovery, lead counsel for each party shall serve and file a
12 certification that all supplementation has been completed.

13 In the event a discovery dispute arises, **lead counsel** for
14 each party shall meet in person or, if counsel are outside the
15 Bay Area, by telephone and make a good faith effort to resolve
16 their dispute. Exchanging letters or telephone messages about
17 the dispute is insufficient. The Court does not read
18 subsequent positioning letters; parties shall instead make a
19 contemporaneous record of their meeting using a tape recorder
20 or a court reporter.

21 In the event they cannot resolve their dispute, the
22 parties must participate in a telephone conference with the
23 Court **before** filing any discovery motions or other papers.
24 The party seeking discovery shall request a conference in a
25 letter served on all parties not exceeding two pages (with no
26 attachments) which briefly explains the nature of the action
27 and the issues in dispute. Other parties shall reply in
28 similar fashion within two days of receiving the letter

1 requesting the conference. The Court will contact the parties
2 to schedule the conference.

3. MOTIONS

4 Consult Civil Local Rules 7-1 through 7-5 and this
5 Court's standing orders regarding motion practice. Motions
6 for **summary judgment** shall be accompanied by a statement of
7 the material facts not in dispute supported by citations to
8 admissible evidence. The parties shall file a joint statement
9 of undisputed facts where possible. If the parties are unable
10 to reach complete agreement after meeting and conferring, they
11 shall file a joint statement of the undisputed facts about
12 which they do agree. Any party may then file a separate
13 statement of the additional facts that the party contends are
14 undisputed. A party who without substantial justification
15 contends that a fact is in dispute is subject to sanctions.

16 A Chambers copy of all briefs shall be submitted on a
17 diskette formatted in WordPerfect 6.1, 8, 9, 10 or 13
18 (Windows), or may be e-mailed to the following address:
19 bzpo@cand.uscourts.gov.

20. MEDIATION

21 This matter has been referred for mediation to be
22 conducted, if possible, within ninety days of the date of the
23 referral. The parties shall promptly notify the Court whether
24 the case is resolved in mediation.

25. SETTLEMENT

26 This case has been referred for assignment to a
27 Magistrate Judge to conduct a settlement conference in
28 January 2008 in the event the case is not resolved in

1 mediation. Counsel will be contacted by that judge's chambers
2 with a date and time for the conference.

3 **6. PRETRIAL CONFERENCE**

4 Not less than thirty days prior to the date of the
5 pretrial conference, the parties shall meet and take all steps
6 necessary to fulfill the requirements of this Order.

7 Not less than twenty days prior to the pretrial
8 conference, the parties shall: (1) serve and file a joint
9 pretrial statement, containing the information listed in
10 **Attachment 1**, and a proposed pretrial order; (2) serve and
11 file trial briefs, Daubert motions, motions in limine,
12 proposed findings of fact and conclusions of law, and
13 statements designating excerpts from discovery that will be
14 offered at trial (specifying the witness and page and line
15 references); (3) exchange exhibits, agree on and number a
16 joint set of exhibits and number separately those exhibits to
17 which the parties cannot agree; (4) deliver all marked trial
18 exhibits directly to the courtroom clerk, Ms. Scott; (5)
19 deliver one extra set of all marked exhibits directly to
20 Chambers; and (6) submit all exhibits in three-ring binders.
21 Each exhibit shall be marked with an exhibit label as
22 contained in **Attachment 2**. The exhibits shall also be
23 separated with correctly marked side tabs so that they are
24 easy to find.

25 No party shall be permitted to call any witness or offer
26 any exhibit in its case in chief that is not disclosed at
27 pretrial, without leave of Court and for good cause.

28 Lead trial counsel for each party shall meet and confer

1 in an effort to resolve all disputes regarding anticipated
2 testimony, witnesses and exhibits. All Daubert motions,
3 motions in limine, and objections will be heard at the
4 pretrial conference. Not less than ten days prior to the
5 pretrial conference, the parties shall serve and file any
6 objections to witnesses or exhibits or to the qualifications
7 of an expert witness. Daubert motions and motion in limine
8 shall be filed and served not less than twenty days prior to
9 the conference. Oppositions shall be filed and served not
10 less than ten days prior to the conference. There shall be no
11 replies.

12 Not less than twenty days prior to the pretrial
13 conference the parties shall serve and file requested voir
14 dire questions, jury instructions, and forms of verdict. The
15 following jury instructions from the *Manual of Model Civil*
16 *Jury Instructions for the Ninth Circuit* (1997 ed.) will be
17 given absent objection: 1.1C, 1.2, 1.6-1.14, 1.18, 1.19, 2.11,
18 3.1-3.3. Do not submit a copy of these instructions. Counsel
19 shall submit a joint set of case specific instructions. Any
20 instructions on which the parties cannot agree may be
21 submitted separately. The Ninth Circuit Manual should be used
22 where possible. Each requested instruction shall be typed in
23 full on a separate page with citations to the authority upon
24 which it is based. Proposed jury instructions taken from the
25 Ninth Circuit Manual need only contain a citation to that
26 source. Any modifications made to proposed instructions taken
27 from a manual of model instructions must be clearly indicated.
28 In addition, all proposed jury instructions should conform to

1 the format of the Example Jury Instruction attached to this
2 Order. Not less than ten days prior to the pretrial
3 conference, the parties shall serve and file any objections to
4 separately proposed jury instructions.

5 Jury instructions that the Court has given in prior cases
6 may be downloaded from the Northern District website at
7 <http://www.cand.uscourts.gov>. (Instructions are located on
8 the "Judge Information" page for Magistrate Judge Zimmerman.)
9 The Court will generally give the same instructions in cases
10 involving similar claims unless a party establishes, with
11 supporting authorities, that the instruction is no longer
12 correct or that a different instruction should be given. CACI
13 instructions generally will be given instead of BAJI
14 instructions.

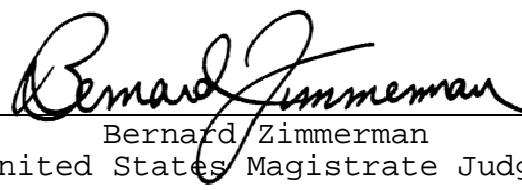
15 All proposed jury instructions, Daubert motions, motions
16 in limine, forms of verdict and trial briefs shall be
17 accompanied by a floppy diskette containing a copy of the
18 document formatted in WordPerfect 6.1, 8, 9, 10 or 13
19 (Windows), or may be e-mailed to the following address:
20 bzpo@cand.uscourts.gov.

21 At the time of filing the original with the Clerk's
22 Office, two copies of all documents (but only one copy of the
23 exhibits) shall be delivered directly to Chambers (Room 15-
24 6688). Chambers' copies of all pretrial documents shall be
25 three-hole punched at the side, suitable for insertion into
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1 standard three-ring binders.

2 Dated: July 10, 2007

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4 Bernard Zimmerman
United States Magistrate Judge

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1 **EXAMPLE PROPOSED JURY INSTRUCTION**
2 **For Chambers of Magistrate Judge Zimmerman**

3 A proposed jury instruction should contain the following
4 elements in the following order: (1) the name of the party
5 submitting the instruction; (2) the title of the instruction;
6 (3) the text of the instruction; (4) the authority for the
7 instruction; (5) blank boxes for the Court to note whether it
8 gives the instruction, refuses to give it, or gives it as
9 modified. The following proposed instruction contains these
10 elements.

11 _____'s Proposed Instruction No. _____.
12 (Party)

13 [Title]

14 [Text]

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23 [Authority]

24
25 ____ GIVEN ____ REFUSED ____ GIVEN AS MODIFIED

ATTACHMENT 1

The parties shall file a joint pretrial conference statement containing the following information:

(1) The Action.

- (A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.
 - (B) Relief Prayed. A detailed statement of each party's position on the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

(2) The Factual Basis of the Action.

- (A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.
 - (B) Disputed Factual Issues. A plain and concise statement of all disputed factual issues which remain to be decided.
 - (C) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.
 - (D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

(3) Trial Preparation.

A brief description of the efforts the parties have made to resolve disputes over anticipated testimony, exhibits and witnesses.

- 1 (A) Witnesses to be Called. In lieu
2 of FRCP 26(a)(3)(A), a list of
3 all witnesses likely to be
4 called at trial, other than
5 solely for impeachment or
6 rebuttal, together with a brief
7 statement following each name
8 describing the substance of the
9 testimony to be given.
10 (B) Estimate of Trial Time. An
11 estimate of the number of court
12 days needed for the presentation
13 of each party's case, indicating
14 possible reductions in time
15 through proposed stipulations,
16 agreed statements of facts, or
17 expedited means of presenting
18 testimony and exhibits.
19 (C) Use of Discovery Responses. In
20 lieu of FRCP 26(a)(3)(B), cite
21 possible presentation at trial
22 of evidence, other than solely
23 for impeachment or rebuttal,
24 through use of excerpts from
25 depositions, from interrogatory
26 answers, or from responses to
27 requests for admission. Counsel
28 shall state any objections to
 use of these materials and that
 counsel has conferred respecting
 such objections.
1 (D) Further Discovery or Motions. A
2 statement of all remaining
3 motions, including motions in
4 limine.

5 (4) **Trial Alternatives and Options.**

- 6 (A) Settlement Discussion. A
7 statement summarizing the status
8 of settlement negotiations and
9 indicating whether further
10 negotiations are likely to be
11 productive.
12 (B) Amendments, Dismissals. A
13 statement of requested or
14 proposed amendments to pleadings
15 or dismissals of parties, claims
16 or defenses.
17 (C) Bifurcation, Separate Trial of

1 Issues. A statement of whether
2 bifurcation or a separate trial
3 of specific issues is feasible
and desired.

4 **(5) Miscellaneous.**

5 Any other subjects relevant to the trial of the action,
6 or material to its just, speedy and inexpensive determination.

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1 **ATTACHMENT 2**

2 **USDC**
3 Case No. CV07-01841 BZ
4 **JOINT** Exhibit No. _____
5 Date Entered _____

6 **USDC**
7 Case No. CV07-01841 BZ
8 **JOINT** Exhibit No. _____
9 Date Entered _____

10 Signature _____

11 Signature _____

12 **USDC**
13 Case No. CV07-01841 BZ
14 **JOINT** Exhibit No. _____
15 Date Entered _____

16 **USDC**
17 Case No. CV07-01841 BZ
18 **JOINT** Exhibit No. _____
19 Date Entered _____

20 Signature _____

21 Signature _____

22 **USDC**
23 Case No. CV07-01841 BZ
24 **PLNTF** Exhibit No. _____
25 Date Entered _____

26 **USDC**
27 Case No. CV07-01841 BZ
28 **PLNTF** Exhibit No. _____
29 Date Entered _____

30 Signature _____

31 Signature _____

32 **USDC**
33 Case No. CV07-01841 BZ
34 **PLNTF** Exhibit No. _____
35 Date Entered _____

36 **USDC**
37 Case No. CV07-01841 BZ
38 **PLNTF** Exhibit No. _____
39 Date Entered _____

40 Signature _____

41 Signature _____

42 **USDC**
43 Case No. CV07-01841 BZ
44 **DEFT** Exhibit No. _____
45 Date Entered _____

46 **USDC**
47 Case No. CV07-01841 BZ
48 **DEFT** Exhibit No. _____
49 Date Entered _____

50 Signature _____

51 Signature _____

52 **USDC**
53 Case No. CV07-01841 BZ
54 **DEFT** Exhibit No. _____
55 Date Entered _____

56 **USDC**
57 Case No. CV07-01841 BZ
58 **DEFT** Exhibit No. _____
59 Date Entered _____

60 Signature _____

61 Signature _____